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Reply to Office Action of 12/3/03
Customer No. 27752

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P&G Case AA399XM

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Ext. (1 mo)
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Application No. : 10/009,083
Applicant(s) : George Endel Deckner, et al.
Filed : March 20, 2002
Title : Absorbent Article with Skin Care Composition
TC/A.U. : 1616
Examiner : Qazi, Sabiha Naim
Conf. No. : 5574
Docket No. : AA 399XM
Customer No. : 27752

ELECTION IN RESPONSE TO EXAMINER'S ELECTION OF SPECIES REQUIREMENT
WITH TRAVERSAL

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

This is responsive to the Election of Species Requirement dated December 3, 2003.

REMARKS

Claims 1-37 are pending in the present application. The Office action states that the claims are directed to more than one species of the generic invention. The Office Action states that the species are deemed to lack unity of invention because they are so linked as to form a single general invention concept under PCT Rule 13.1. The Office Actions states the species are as follows: Claim 1 is drawn to an absorbent article comprising a body contacting surface and an absorbent core, wherein (1) at least a portion of the body contacting surface and (2) the skin care

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the various claims would be put into separate future classifications or require a different field of search. In fact, it is believed by the Applicants that the classification of the various alternative embodiments in the claims would be the same and the field of search is the same. For this reason alone the restriction requirement is improper.

Finally, M.P.E.P. §806.01 states that in passing upon questions of restriction, it is the "claimed subject matter" that is considered and such claimed subject matter "must be compared in order to determine the question of distinctiveness or independence." The Examiner has failed to make any consideration or comparison of the claimed subject matter in order to determine the question of distinctiveness or independence. The Examiner has merely provided conclusory statements that the application contains claims to patentably distinct species. There is no detailed analysis or comparison of any of the claims. This type of conclusory restriction requirement is improper under the rules.

For all of the above reasons, Applicants hereby traverse the restriction requirement since the restriction in this instance is improper and the Examiner failed to provide the proper analysis and detailed explanation in the Restriction Requirement mandated by the rules. Further, the conclusory statements of the Examiner make it impossible for Applicant to provide a meaningful traversal. For all of the above reasons, the Restriction Requirement is improper and should be withdrawn.

CONCLUSION

Applicants have elected, with traverse, to prosecute the species in Claim 1. The claims that read on the elected species are Claims 1-29. Because the Examiner has not satisfied the burden of demonstrating that election between the species is proper, Applicants request reconsideration of the election of species requirement.

Respectfully submitted,

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January 12, 2004
Cincinnati, Ohio